

### Remarks

Claims 1-20 and 41-60 remain pending. Claims 1-20 and 41-60 stand rejected. Claims 21-40 have been previously canceled. The Applicant respectfully traverses the rejection and requests allowance of claims 1-20 and 41-60 in light of the following remarks.

#### Claim Rejections Under 35 U.S.C. § 103

Claims 1-20 and 41-60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,104,727 (Moura) in view of International Publication No. WO 00/67449 A1 (Fabiano). (See pages 2-7 of the Office Action.)

#### *Claims 1 and 41:*

Independent method claim 1 is reproduced below, with emphasis supplied:

1. A method of operating a probe device in a broadband wireless system, the method comprising:
  - receiving a message;
  - processing the message to determine *channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel*;
  - storing the channel information in a memory in the probe device; and
  - transferring the channel information from the memory to a user system.

Independent probe device claim 41 incorporates similar provisions to claim 1.

The Office Action correctly notes “Moura doesn’t teach specifically, receiving a message; processing the message to determine channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel.” However, the Office Action goes on to state “...Fabiano advocates in an analogous art, that receiving a message; processing the message to determine channel information describing actual use of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing actual use includes a per-user breakdown of a time spent in each channel. (Pg. 5; 1-9, Pg. 14; 3-19)...” The Applicant respectfully traverses this interpretation of the prior art and the application of this

prior art to the present claims.

Fabiano actually advocates the use of a local arbitration server to subdivide a time slice assigned for its use. This local arbitration server *sets* the file transmission rate to be *assigned* to a particular transmission. As Fabiano summarizes, “In essence, this system provides an overlay of *time slicing* and *rate allocation* by which the distributed control system can *specify* a window of time and a rate in order to ensure better file transmission.” (Fabiano, page 5, lines 6-9, emphasis added.) Likewise, on page 14, lines 5-7, Fabiano states that “each local arbitration server *assigns* its jobs a rate and may further *subdivide* the jobs into different time slots and at different rates to make more efficient use of the resources allocated to that local arbitration server.” (Emphasis added.)

Fabiano describes an arbitration server *setting* file transmission rates and time slots and *assigning* these rates and time slots to particular transmissions as a method of allocating bandwidth to different processes. There is no indication that these processes actually use all of the bandwidth allocated to them. For example, some processes may use part, but not all, of the time slot allocated to them by the arbitration server. Fabiano provides no mechanism for detecting such an occurrence. In contrast, claim 1 requires “processing the message to determine channel information describing *actual use* of each of a plurality of channels in the broadband wireless system by each of a plurality of users, wherein the channel information describing *actual use* includes a per-user breakdown of a *time spent in each channel*.” Fabiano assigns transmission rates and time slots to different processes, but provides no mechanism for discovering the *actual use* of those time slots by the individual processes.

Thus, the combination of Moura and Fabiano fails to disclose, teach, or suggest all of the limitations present in claim 1, and so the combination fails to render claim 1 obvious.

Since independent claim 41 contains limitations similar to those of claim 1, the above discussion also applies equally to claim 41. For at least the reasons presented above, the Applicant contends that independent claims 1 and 41 are patentable over Moura in view of Fabiano, and such indication is respectfully requested.

*Claims 2-20 and 42-60:*

Claims 2-20 depend from independent claim 1 and claims 42-60 depend from independent claim 41, thus incorporating the features of their respective independent claims. Thus, the Applicant asserts claims 2-20 and 42-60 are allowable for at least the same reasons as claims 1 and 41, and such indication is respectfully requested.

**Conclusion**

Based on the above remarks, the Applicant respectfully requests the reversal of the rejection of claims 1-20 and 41-60. Additional reasons in support of patentability exist, some of which have been presented in previous communications, but such reasons are omitted here in the interests of clarity and brevity. The Applicant thus respectfully requests allowance of claims 1-20 and 41-60.

The Applicant believes no fees are due with respect to this filing. However, should the Office determine fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765.

Respectfully submitted,

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/Leslie Paul Gehman/

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